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March 4, 2008

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Re: MM Docket 86-440

Dear Ms. Dortch:

I, Sid Shumate, as President of Givens & Bell, Inc., and as President of Evangel Communications, Inc., hereby submit the enclosed Petition for Reconsideration and Special Relief, submitted informally in re Givens & Bell Inc., and submitted formally in re: Evangel Communications, Inc., in regards to the grant of a License to Cover for television station WCAV, Charlottesville, Virginia, and also Petition the Commission for Reconsideration and Special Relief with regards to the construction permit applications of Evangel Communications, Inc., file # BPCT-860410KN, and of Givens & Bell, Inc. File No. BPCT-19961023KF.

I certify that I am mailing or hand-carrying true copies to the following interested parties:

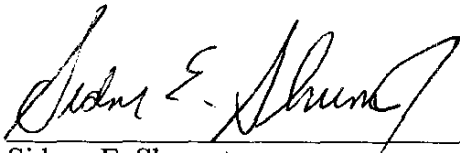
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Sidney E. Shumate
President, Evangel Communications, Inc.
President, Givens & Bell, Inc.
1897 Ridge Road, Haymarket VA 20169

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Before the

**Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	MM DOCKET NO. 86-440
)	
Charlottesville Broadcasting Corporation)	Facility ID #363, Call Sign WCAV
And it's assignee, Gray Licensee, Inc.)	File No. BLCT-20040813AAJ
For a License to Cover for Television)	
Station WCAV, Charlottesville, VA)	
For A New TV Station on Channel 19)	
At Charlottesville, Virginia)	
)	
The Application for Construction Permit)	File No. BPCT-19860410KN
of Evangel Communications, Inc. for Ch. 64)	
At Charlottesville, VA)	
)	
The Application for Construction Permit)	File No. BPCT-19961023KF
Of Givens & Bell, Inc. for Ch. 64)	
At Charlottesville, VA)	

Petition for Reconsideration and Special Relief

March 4, 2008

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Re: MM Docket 86-440, regarding the long-delayed recent grant of a License-to-Cover for television broadcast station construction permit BLCT – 200408913AAJ, without completing the due process required by The Balanced Budget Act of 1997, Section 3002(a)(3), and without providing a reply to our “Informal and Formal Objections and Petition for Reconsideration and Special Relief”, submitted under docket MM 86-440.

To: The Commission:

On August 16, 2004, the Commission accepted for filing an Application for Television Broadcast Station License, File No. BLCT-20040813AAJ, submitted by the Charlottesville Broadcasting Corporation, (CBC), on behalf of itself and its assignee, Gray Licensee, Inc., for a License to Cover for the construction permit for WCAV, File No. BMPCT-20031219AAK, Facility Id. No. 363. In response to this filing, I hereby submitted, as one consolidated filing, the following:

1. An Informal Objection, submitted in re Givens & Bell Inc., and its pending application for review, of the CBC application for consent to assignment of broadcast station construction permit or license BAPCT – 20040316AJT.
2. A Petition for Special Relief with regards to the construction permit applications of Evangel Communications, Inc., File No. BPCT-860410KN, and of Givens & Bell, Inc. File No. BPCT-19961023KF for a television station construction permit on Ch. 64, in Charlottesville, VA.
3. A Formal Objection, submitted in re: Evangel Communications, Inc., to the grant of a License to Cover for television station WCAV, Charlottesville, Virginia.

All of which will be referred to as “The Petition” in this document. The Petition was received by the Commission on September 20, 2004, and posted into the CDBS under MM Docket 86-440.

From that time until February 5, 2008, the Commission has remained curiously quiet regarding this ongoing, more than 20 year-old proceeding. In the three and one-half years since the filing, the Commission has made no reply to The Petition, and the construction permit holder, GRAY TELEVISION LICENSEE, INC. (Gray) has continued to operate the station, WCAV, a full power analog television station on channel 19, situated in Charlottesville, Virginia, under program test authority.

The Petition requested that several issues be addressed. In the Informal Objection, I informally objected, as President of Givens & Bell, Inc. (G&B), (formerly the Givens & Bell division of Blue Ridge Video Services, Inc.), to the immediate grant of CBC's application for License to Cover, pending the outcome of the G&B Application for Review, submitted June 24, 2004, of the CBC application for consent to assignment of broadcast station construction permit or license BAPCT – 20040316AJT. The license should not have been granted until the questions raised in the application for review were addressed and settled.

Regarding the questions raised in G&B's application for review, I hereby objected to the request of CBC, stated in Exhibit 3 of their Application for License, that the reporting requirements of 47CFR73.1620(g) be waived.

Background re: Objection

The ownership reporting requirements in 47CFR73.1620(g) were established in 1991¹ pursuant to review and revision of the Comparative Hearing Process for New Broadcast Applicants. This final rule states: "The information will be collected to expedite the Commission's comparative hearing process and to avoid abuses of that process associated with the submission of inflated and /or non-*bona fide* comparative promises. Submission of the required reports will enable the Commission to determine whether the successful applicant was fulfilling its comparative promises concerning divestiture of other media interests, the integration of ownership and management, and the passive role

¹ Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, General Docket 90-264, FCC 90-410, 56 FR 787.

of certain station owners.”² It also states: “Although, in a particular case, a settlement may result in a grant to an applicant that might not be considered “best qualified” under our comparative criteria, the settlement process takes place within the context of the comparative criteria,...”³ The Charlottesville Broadcasting Corporation (CBC) application is subject to the comparative hearing ownership reporting rules, as the grant of the construction permit was subsequent to a settlement agreement. Since this settlement agreement was approved by the Commission pursuant to the auction rules in 47 U.S.C. (309)(1)(3), the comments of the Commission in a Memorandum Opinion and Order Adopted April 15, 1999 apply: “we continue to believe that our auction rules,...by prescribing special disclosure requirements for transfers or assignments of stations held less than three years, afford adequate safeguards against....applicants who filed their applications for a speculative purpose.”⁴

Since the grant of this construction permit was the result of a settlement agreement reached between Achenar Broadcasting Company (Achenar) and Lindsay Television, Inc. (Lindsay), that resulted in the formation of the CBC, and not granted subsequent to an auction, the integration promises made by the applicants as a part of the process, continue to survive, and must be met. There is only one time and place where these integration promises, and the subsequent reporting requirements, may be terminated. “Thus, where a settlement of the case is entered into and filed with the presiding judge on or before the notice of appearance deadline, the judge may entertain and grant a request to relieve the

² 56 FR 787, *Needs and Uses*

³ 56 FR 787, at 2.

⁴ From Memorandum Report and Order, FCC 99-74, Adopted April 15, 1999, paragraph 16. See *First Report and Order*, 13 FCC Rcd at 15956. See also 47 C.F.R. paragraph 1.2111(a) (prescribing special disclosure requirements in the event of a transfer or assignment of a license held by auction winner within three years of the receipt of the license): *First Report and Order*, 13 FCC Rcd at 15992.

successful applicant of divestiture and integration proposals.”⁵ In a subsequent Memorandum, Opinion and Order the Commission extended this time, stating: “we will apply the Ruarch policy and permit applicants to withdraw divestiture and integration proposals in conjunction with settlement agreements filed up until the date established for the exchange of exhibits in the case, that is, after the completion of discovery in the case. After the exhibit exchange date, the successful applicant will be expected to fulfill its divestiture and integration proposals.”⁶

Our review of the documents found in proceeding 86-440 has found no request on record to dismiss the integration proposals, either in the settlement agreement submitted on January 30, 1998, or in the subsequent filings. Therefore, the integration promises made by the applicants must still be met, and the associated reporting requirements of 47CFR73.1620(g), are still required.

Informal Objection of Givens & Bell:

With respect to these reporting requirements in this specific instance, there are particular questions, especially in re: the transfers of ownership and change of the balance of control regarding the interests of the former Lindsay Television, Inc., that should be reported, on the record, in full, with respect to the Commission’s review of the transfer of control.

⁵ 58FR787, at 11.

⁶ Proposals To Reform the Commission’s Comparative Hearing Process To Expedite the Resolution of Cases (Memorandum Opinion and Order) General Docket 90-264, 56 FR 25636, at 3.

On June 24, 2004, I submitted, as a homeowner in Charlottesville, Virginia, and as principal owner of the Givens & Bell division of Blue Ridge Video Services (now Givens & Bell, Inc.) a request for review of the May 28, 2004 grant of an application of the Charlottesville Broadcasting Corporation ("CBC"), to transfer control of facility #363, Call Sign WCAV, a construction permit, and its associated, then pending modification of construction permit application, for a new Television station at Charlottesville, Virginia, to Gray Television Licensee, Incorporated ("Gray").

The questions raised include the integration statement of the President of Achenar (now President of CBC). This applicant, the holder of controlling interest in the construction permit, submitted an integration statement, stating, under penalty of perjury, that the applicant (in the case of Ms. Polivy, President and sole voting principal of Achenar Broadcasting Company, "the sole voting principal"), would work full time as the General Manager of the station.⁷ In fact, a separate person, a Mr. Bill Varechna, was been hired by CBC and its assignee, Gray Licensee, Inc. (Gray), to serve as General Manager of WCAV, and was followed in turn by others, none of which were Ms. Polivy.⁸ As a result, the reports required by 47CFR73.1620(g) should provide useful information with regards to this proceeding, and should not be waived.

As President of Evangel Communications, Inc., (Evangel), I also Petitioned the Commission for Special Relief.

⁷ "Amendment to the Application of Achenar Broadcasting Company", May 22, 1986.

Background and Timeline re: Petition for Reconsideration and Special Relief

Of the original five applicants for television channel 64, in Charlottesville, Virginia for which a comparative hearing designation order was adopted on October 31, 1986, two applicants actively withdrew from the proceeding. Commonwealth Broadcasting Corporation, File No. BPCT-860410KO, filed a motion to dismiss on December 10, 1986, and Christopher Gault, File No. BPCT-860220KF, filed to dismiss on January 12, 1987. Both applications were dismissed with prejudice. Three applicants remained: Evangel, (BPCT-860410KN), Achenar (BPCT-860410KP), and Lindsay (BPCT-860410KQ). The National Radio Astronomy Observatory (NRAO) also filed an Informal Objection, and continued to be an active participant in the proceeding.

On August 18, 1988, the presiding Administrative Law Judge (ALJ) issued an Initial Decision⁹ proposing to grant the application of Lindsay, and denying the applications of Evangel and Achenar. The Initial Decision, in paragraph 94, states: “Evangel ranks last because of its diversification and integration deficiencies.” The ALJ also noted that Achenar was comparatively deficient, and would not have prevailed even if Achenar was not disqualified because of interference to the NRAO¹⁰. While Achenar proceeded to fight the dismissal, Evangel did not pursue the matter at that time. The initial decision was remanded by the Review Board¹¹. In the Supplemental Initial Decision¹², the ALJ

⁹ Evangel Communications, Inc., 3 FCC Rcd. 5421 (ALJ 1998) (Initial Decision)

¹⁰ Id., at 3 FCC Rcd. 5433.

¹¹ 4 FCC Rcd. 4629 (Rev. Bd. 1989).

¹² 5 FCC Rcd. 962 (ALJ 1990)

denied both Achenar and Lindsay's applications for what he termed violation of the radio astronomy Quiet Zone. The Supplemental Initial Decision was reversed by the Review Board¹³. The Review Board was then reversed by the Commission, denying both Achenar and Lindsay¹⁴. All subsequent appeals for reconsideration before the Commission were denied¹⁵.

The proceeding was then appealed separately, by Achenar (on October 21, 1991) and by Lindsay (on April 6, 1992), to the District of Columbia Circuit Court. The appeals were consolidated, and then suspended, at the Commission's request, until a mass informal renewal objection strategy undertaken by Lindsay had run its course. After the Commission's denial of those objections, on August 18, 1995, the Court of Appeals, in *Achenar Broadcasting Company v. Federal Communications Commission*, (*Achenar v. FCC*) No. 91-1516, found that: "The Commission's reasoning for the denial of Achenar's and Lindsay's applications was less than clear." The Court of Appeals remanded both license applications to the Commission "for an adequate inquiry and explanation of what test of the public interest it is using in the case of astronomy channel use"¹⁶.

Achenar and Lindsay then proceeded to negotiate with the NRAO; an engineering proposal acceptable to the NRAO was presented to the Commission.

¹³ 5 FCC Rcd. 6309 (Rev. Bd. 1990)

¹⁴ 6 FCC Rcd. 5393 (1991)

¹⁵ reconsideration denied; 7 FCC Rcd 1778 (1992)

¹⁶ *Achenar Broadcasting Company v. FCC*, 62 F.3rd 1441 (D.C. Cir. 1995)

Other developments occurred at the Commission, in Congress, and before the D.C. Circuit Court, during the seven years between August 18, 1988 and August 18, 1995, when the Court remanded the applications to the FCC, and the additional two years and five months that passed before the submission of the Joint Petition for Approval of Settlement Agreement on January 30, 1998, that affect this proceeding.

These developments included:

1. Bechtel vs. FCC: In 1992, as a result of the *Bechtel v. FCC* (*Bechtel*) decisions¹⁷ the Commission was directed by the D.C. Circuit Court to reexamine the integration of management and ownership criterion that it had traditionally used to evaluate competing applications in a comparative hearing for a new commercial broadcast station. The Commission's subsequent rule making proceeding was terminated when the Balanced Budget Act of 1997 went into effect.
2. The Balanced Budget Act of 1997: The Balanced Budget Act of 1997¹⁸, signed by President Clinton on August 5, 1997, mandated that future mutually exclusive full power commercial broadcast applications be resolved, either using auctions, or the comparative hearing process to resolve the frozen *Bechtel* cases.¹⁹ "Specifically, Section 309(1) provides that the Commission "shall have the authority to conduct a competitive bidding proceeding pursuant to subsection [309](j)" in comparative broadcast cases involving competing applications filed

¹⁷ *Bechtel v. FCC* (*Bechtel II*), 957 F.2d 873 (D.C. Cir. 1992) 294 U.S.App.D.C. 124; see also *Bechtel v. FCC* (*Bechtel I*), 10 F.3d 875 (D.C.Cir. 1993) 304 U.S.App.D.C. 100.

¹⁸ Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 258-260

¹⁹ First Report and Order, MM Docket 97-234, GC Docket 92-52, and General Docket No. 90-264, 13 FCC Rcd. 15920 (1998) (Auctions R&O).

before July 1, 1997, and that if the Commission does conduct a competitive bidding proceeding, it "shall treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding."²⁰ In implementing the statute, the Commission determined in the *First Report and Order* and reaffirmed on reconsideration that auctions will be fairer and speedier for all pending comparative broadcast cases even for those cases that were designated for hearing and were litigated at least through an Initial Decision by an Administrative Law Judge.²¹ Section 3002(a)(3) of the The Balanced Budget Act of 1997, states that:

"(I) Applicability of Competitive Bidding to Pending Comparative Licensing Cases.--With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall--

"(1) have the authority to conduct a competitive bidding proceeding pursuant to subsection (j) to assign such license or permit;

"(2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding; and

"(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997."

²⁰ Section 309(1) as quoted, with comments, from *Order*, FCC 99-157 paragraph 3, MM Docket No. 97-234, GC Docket No. 92-52, and General Docket No. 90-264, Adopted June 30, 1999, Released July 2, 1999.

²¹ *First Report and Order*, 13 FCC Rcd. 15940-42, at 52-58; *Order on Reconsideration*, FCC 99-74 at 8.

And the specific language ordered by the Balanced Budget Act of 1997 to codify the changes is:

“(3) Resolution of pending comparative licensing cases.--Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is further amended by adding at the end the following new subsection:
 “(1) Applicability of Competitive Bidding to Pending Comparative Licensing Cases.--With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall--
 “(1) have the authority to conduct a competitive bidding proceeding pursuant to subsection (j) to assign such license or permit;
 “(2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding; and
 “(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.”.

Therefore, the Balanced Budget Act of 1997 ordered that for applicants whose applications had been filed before July 1, 1997, the commission must waive any and all provisions of its regulations necessary to permit such persons to enter into an agreement to procure the removal of a conflict between their applications, during the 180-day period which ended on February 1, 1998.

3. Report and Order, Reallocation of Television Channels 60-69, the 746-806 MHz Band This Report and Order²², initiated by the Commission to implement Section 3004 of the Balanced Budget Act of 1997, precluded the further grant of new construction permits on television channels 60 to 69 (746 – 806 MHz).

²² *First Report and Order*, FCC 97-421, 13 FCC Rcd. 15920 (1998), recon. Denied, FCC 99-74 (rel. April 20, 1999) ET Docket 97-157

4. The Commission, in an attempt to bring an end to proceeding 86-440, and on its own Motion, in a Memorandum Opinion and Order²³ adopted on April 19, 2000, approved the settlement agreement, pursuant to 47 U.S.C. paragraphs 337 and 309(1)(3), between Achenar, Lindsay, and the NRAO, that had been submitted on January 30, 1998, and ordered the grant of a construction permit on television channel 19, replacing channel 64 in the application(s), at Charlottesville, VA to CBC. CBC was, as formed, owned 50% by Achenar, and 50% by Lindsay.

With Regard to Evangel Communications, Inc.

The Commission, in choosing to reinstate Achenar and Lindsay as applicants, rather than defending its earlier decision, erred in that it failed to also automatically reinstate Evangel. Evangel had been disqualified and its application denied in the same Initial Decision as Achenar; the same Initial Decision, after subsequent appeals, that was appealed to the D.C. Circuit Court, by Achenar. Between the date of the Initial Decision, and the decision in *Achenar v. FCC* remanding Achenar and Lindsay, the dispositive comparative criteria by which Evangel Communications had been denied, were declared, in *Bechtel I and II*, to be arbitrary and capricious, and were therefore no longer valid. The actions of the Commission in its Memorandum Opinion and Order, ordering the acceptance and eventual grant of a construction permit yet to be approved, rendered moot all other criteria by which Evangel had been disqualified. Therefore, for the Commission to reinstate Achenar and Lindsay, subsequent to the remand of the Court, without also reinstating Evangel so that it could also participate in the settlement agreement, created a situation where one of the applicants in a comparative hearing

²³ Memorandum Opinion and Order, adopted 4/19/2000, Proceeding 86-440.

received disparate treatment. The Commission, inasmuch as it admitted, in paragraph 8 of a Memorandum Opinion and Order, FCC # 99-74, adopted April 15, 1999, that it could not finalize a twice-granted, but not finalized, construction permit application because the comparative issues invalidated by *Bechtel II* were dispositive in both decisions, must conversely have been aware that it was necessary, when reinstating applicants of still-pending comparative cases, to also reinstate all applicants whose denial by the Commission was based upon invalidated comparative criteria. All three applicants had been denied by the Commission utilizing criteria that, by 1996, had been declared arbitrary and capricious by the Courts. The treatment of Evangel is significantly different from that afforded to the other two previously considered and similarly situated applicants, in comparable circumstances. Similarly situated parties must be treated alike.²⁴ The rules in 47U.S.C. (309)(l) that allowed auction-avoiding settlements, allowed these settlements only during the 180 days prior to February 1, 1998. Therefore, when Achenar and Lindsay were reinstated, and were allowed to negotiate a merger agreement with each other, the Commission, by failing to reinstate Evangel, left an eligible applicant out of the agreement. The subsequent agreement, therefore, did not include at least one applicant that was eligible to be included in this agreement, rendering the agreement moot. Therefore, the agreement should never have been approved by the Commission.

With Regard to Evangel Communications, Inc. and Givens & Bell, Inc.

The plain language of the Balanced Budget Act of 1997 (the Act) is clear. There were only two requirements that had to be met for an applicant to be eligible to participate in a

²⁴ *Melody Music, Inc. v. F.C.C.*, 345 F.2d 730 (D. C. Cir. 1965).

settlement agreement that would avoid an auction in a pending comparative licensing case, or to be eligible to be qualified bidders for purposes of such proceeding:

1. The case had to be pending.
2. The applicants had to have filed competing applications for initial licenses or construction permits for commercial radio or television stations with the Commission, before July 1, 1997.

The U. S. Supreme Court, in denying a writ of certiorari in *Ranger Cellular and Miller Communications, Inc. v. Federal Communications Commission and United States of America*²⁵ noted that the provisions applied to “pending comparative licensing cases. -- those involving “competing applications for initial licenses or construction permits for commercial radio or television stations” in which applications had been filed before July 1, 1997.” In doing so, the U. S. Supreme Court pointed out that with regard to these cases, it is the particular comparative hearing case, (not necessarily all of the eligible applicant’s applications), that must be pending.

With regard to any and all other requirements, including, but not limited to the fact that said applicants may have been previously denied by Commission action, and not be currently pending, the Act states:

“(T)he Commission shall--(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.”

²⁵ 333 F.3rd 255 (U. S. Court of Appeals) cert denied,(U.S. Supreme Court) No. 03-831 (March, 2004)

Clearly, the intent of Congress was to include, in these settlements and auctions, all applicants who had filed competing applications in a particular case before July 1, 1997, including, but not limited to, those that had been previously denied under now-invalidated comparative criteria, and those that had been denied by the Commission as not being parties to the proceeding. Congress also ordered the Commission, clearly and simply, to waive, as necessary, any and all of its rules in order to achieve this result.

By not affording Evangel and G&B the opportunity to participate in the settlement, the Commission failed to meet the required mandate of Congress. The window of opportunity for settlement is now long past. The settlement agreement is, therefore, not valid, and the Commission must rescind its approval of the agreement and all related subsequent actions. Since the settlement window is now long closed, the Congressional mandate in 47 U.S.C. (301) requires the Commission to place the Ch. 64 (now Ch. 19) comparative hearing, Docket 86-440, allotment up for auction, with the eligible bidders being Evangel, CBC or Gray (the principals of Lindsay having merged with, then bought out by, the former principals of Achenar, who subsequently sold out to Gray), and G&B.

I, Sid Shumate, as President of Givens & Bell, Inc., and as President of Evangel Communications, Inc., also petitioned for Reconsideration and Special Relief on September 13, 2004. I hereby reconfirm my petition before the Commission to reconsider its approval of the settlement agreement, and to:

1. Rescind the settlement agreement and all related subsequent actions.
2. Reinstate Evangel as an pending applicant, in full, with regard to Mass Media Proceeding 86-440, the comparative hearing /auction proceeding re Ch. 64/Ch. 19 at Charlottesville, VA.
3. Install G&B as an applicant eligible to participate in an auction, or, if the circumstances allow, in any future window of opportunity to participate in a settlement agreement re: Mass Media Proceeding 86-440, as authorized and required by 47 U.S.C. (301)(l).

I also submitted a Formal Objection, as President of Evangel Communications, Inc. to the grant of CBC's application for License to Cover.

On March 5, 2008, after three and one-half years of deafening silence, the Commission, by way of its Authorizing Officer, Clay C. Pendarvis, the Associate Chief of the Video Division Media Bureau, without further notice or consideration of the due process required, as outlined above, to proceed in this matter, without hearings, and without any prior reply or other notification to Givens & Bell and Evangel regarding the Petition, granted a License to Cover, License File Number BLCT-20040813AAJ, to Gray.

Petition for Reconsideration and Special Relief

As the continuing President of both Givens & Bell, Inc. and of Evangel Communications, I hereby Petition for Reconsideration and Special Relief in this proceeding. If this grant was as a result of a misguided clerical error, or an attempt by an uninformed staffer to

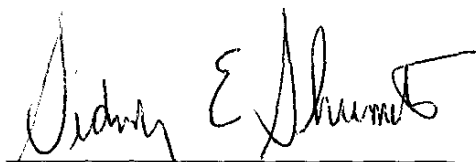
clear what appeared to be a stalled, misplaced or forgotten application, I hereby Petition for Special Relief and request that the Commission immediately rescind this grant and return the status of the application to pending, pursuant to proceeding with the long overdue due process required in this case. The long silence that has ensued clearly indicates the difficulty that the Commission must have one time perceived in meeting its own regulations, and Congress' requirements, in this proceeding, and in finding an equitable final solution to this proceeding.

If this grant was not in error, I hereby Petition the Commission to reply to my Petition of September 13, 2004, in full; providing among the petitioned requests, a reply regarding why:

1. The issue of the ownership reporting requirements in 47CFR73.1620(g) was not addressed, or, if it was, why interested parties Givens & Bell, Inc. and Evangel, were not notified in any way of the proceeding in reply to the Petition, and that no record of same exists in the CDBS entries for Docket MM 86-440.
2. The waiver of all FCC regulations, required by the Balanced Budget Act of 1997 in order to bring Givens & Bell, Inc. and Evangel, into an agreement to procure the removal of a conflict between the applications in regard to the settlement of the grant of the construction permit for Channel 19 in Charlottesville, Virginia, that has not been addressed, and has not been consummated.

3. Why, in light of the above, and with regard to the more than twenty years that this proceeding has been in progress, that without due process, without prior notice to the interested parties in proceeding MM 86-440, without a reply to the Petition, and after more than a three-year period of inactivity in this proceeding, this grant of the License to Cover was made to Gray.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sidney E. Shumate", written over a horizontal line.

Sidney E. Shumate